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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,906	10/18/2001	Francois-Xavier Nuttall	46030.00030	5561

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EXAMINER

REAGAN, JAMES A

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

# Office Action Summary

Application No.

10/041,906

Applicant(s)

NUTTALL ET AL.

Examiner

James A. Reagan

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in response to the amendment received on 15 August 2003 (paper #9).
2. Claims 3-5, 8, 11, 12, 15-27, 30, 33, 34, 37-41, 43, 45-49, 52, 55, 56, 59-70, 76, and 83 have been amended (paper #9).
3. Claims 1 and 2 have been cancelled (paper #9).
4. Claim 85 has been added (paper #9).
5. Claims 3-85 have been examined.
6. The rejections of claims 3-85 are unchanged.
7. The rejection of claim 85 is original.

## **RESPONSE TO ARGUMENTS**

8. Applicant's arguments received on 15 August 2003 have been fully considered but they are not persuasive. Referring to the previous Office action, Examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for comprehensibility while maintaining the same grounds of rejection of the claims, except as noted above in the section labeled "Status of Claims." This information is intended to assist in illuminating the

teachings of the references while providing evidence that establishes further support for the rejections of the claims.

With regard to the limitations of claims 3, 25, and 47, Applicant argues that each and every element of the claim is not shown. The examiner respectfully disagrees. It is noted that the features upon which applicant relies (i.e., Provides a barrier, etc.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to the limitations of claims 5, 27, 66, and 76, the Applicant argues that the examiner use personal knowledge as a basis for the rejections. The Examiner respectfully disagrees. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

9. The following is a **Final Rejection** of all claims and associated limitations pending in the current application as amended in paper #7.

### **Double Patenting**

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 3, 25, and 47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 8, and 11 of U.S. Patent No. US 6,202,056. Both the application and the patent claim delivering a permit and conveying data to deliver a permit.

**Claim Rejections - 35 USC § 103**

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiser et al. (US 6,385,596 B1) in view of Clawson (US 6,112,304).

**Claims 3, 4, 25, 26, and 47:**

Wiser discloses an online music distribution system, permits in the form of authorizations, tokens, and PKI, and delivering the digital file (column 4, lines 13-28). Wiser does not specifically disclose tuples, reports, or firewalls. Clawson, however, does disclose tuples (column 12, lines 50-54), generating reports (column 16, lines 31-41), and a standard firewall (column 18, lines 33-44). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Wiser with Clawson because distributed computing is now widely available at lower prices, and the most cost-effective approach to many problems may involve harnessing many connected processors together into one large system. Some computing problems, such as tracking retail sales and inventory, improve reliability, since the failure of a single processor in a distributed system will not necessarily bring all work on a given problem to a halt. See Clawson, column 1, lines 13-23.

**Claims 5, 9, 10, 16, 23, 24, 27, 38, 45, 46 and 51, 60, 63, 64, 66 - 68, 72 - 74 and 76 - 80:**

Applicants' step of conveying a permit from a source reads on the content manager conveying the media voucher in response to a request to purchase content (digital media), and Applicants' step for conveying a portion of a data product reads on the delivery server (second provided process) conveying the purchased content to the consumer and column 9, lines 56 - 67. Applicants' steps of conveying without conveying indicia of identification of the source reads on the discussion of claims 20 and 22, below.

**Claims 6, 28 and 50:**

Applicants' multiple subsystem facility reads on figure 1 B.

**Claims 7, 29, 31, 32, 53 and 54:**

See discussion of claims 20 and 22, below.

**Claims 8, 30, 52 and 75:**

Applicants' first subsystem reads on the content manager, and Applicants' second subsystem reads on the delivery server. While Wiser et al do not specifically disclose the use of a private network for communication between the content manager and delivery server, it is considered that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wiser et al to use a private network if, for instance, the various elements of the music distribution center were physically situated at one location.

**Claims 11, 33 and 55:**

The language of Applicants' claim 11 reads on columns 18 - 19, lines 66 - 67 and 1-10, respectively.

**Claims 12, 13, 34, 35, 49, 56 and 57:**

Applicants' second request reads on the voucher ID.

**Claims 14, 15, 36, 37, 58 and 59:**

Applicants' consumer subsystem reads on element 126.

**Claims 17, 18, 39, 40, 61 and 62:**

Wiser et al disclose both downloading and streaming the media data.

**Claims 19, 21, 41 and 43:**

Wiser et al disclose protected transfer; see column 6, lines 15 - 27.

**Claims 20, 22, 42, 44, 48, 69 - 71 and 82 - 85:**

Although Wiser et al do not specifically teach the use of anonymous transfer of data, Clawson discloses the use of firewalls as discussed above.



**Conclusion**

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **James A. Reagan** whose telephone number is **(703) 306-9131**. The examiner can normally be reached on Monday-Friday, 9:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **James Trammell** can be reached at (703) 305-9768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 305-3900**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

**Washington, D.C. 20231**

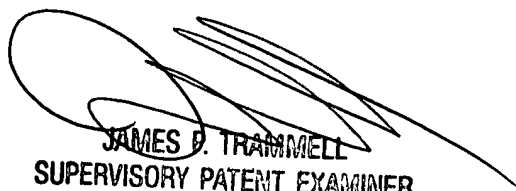
or faxed to:

<b>(703) 305-7687</b>	[Official communications; including After Final communications labeled "Box AF"]
<b>(703) 308-1396</b>	[Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

JAR

17 November 2003

  
**JAMES P. TRAMMELL**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3300**